

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Plourde, et al.

Confirmation No.: 4414

Group Art Unit: 2616

Serial No.: 10/073,689

Examiner: Vent, Jamie J.

Filed: February 11, 2002

Docket No. A-7420 (191920-1190)

For: **MANAGEMENT OF TELEVISION PRESENTATION RECORDINGS**

REMARKS IN SUPPORT
OF PRE-APPEAL BRIEF CONFERENCE

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants submit the following remarks in support of a Request for Pre-Appeal Brief Conference.

It is believed a two-month extension of time is required. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 08-2025.

REMARKS

Applicants submit the following remarks in view of the Final Office Action mailed April 6, 2006 and the Advisory Action mailed June 30, 2006. Claims 3-5, 7-12, 14-15, 17-19, 21, 23-27, 29-32, 35-38 and 40-56 remain pending.

Claims 3-5, 7-12, 14-15, 17-19, 21, 23-27, 29-32, 35-38, and 40 - 58 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,832,385 to Young *et al.*, (“Young”), in view of U.S. Patent No. 6,481,011 to Lemmons (“Lemmons”). Applicants respectfully traverse these rejections for at least the reason that the proposed combination of Young and Lemmons does not disclose, teach, or suggest each and every limitation of Applicants’ claims as is required by 35 U.S.C. § 103. Accordingly, Applicants respectfully traverse this rejection of claims 3-5, 7-12, 14-15, 17-19, 21, 23-27, 29-32, 35-38, and 40-58, and respectfully submit that there exists clear error, supported by the evidence in the record, in this rejection.

Independent Claim 41

For example, the proposed combination of Young and Lemmons does not disclose, teach or suggest the feature of “*assigning a second color responsive to determining that the television presentation has a time scheduling conflict with the another television presentation that is scheduled to be recorded,*” nor the feature of “*presenting the television presentation listing as part of an interactive program guide (IPG) having the second color as a background color for the television presentation listing*” as recited in claim 41.

The Final Office Action indicates that Young “fails to disclose that the color of the conflict is a changeable color option.” *Final Office Action*, page 2. Applicants agree but respectfully submit that, even more than not disclosing a changeable color option, Young does not even disclose “a time scheduling conflict with the another television presentation that is scheduled to be recorded” as claimed. Even assuming, *arguendo*, that Young discloses: highlighting a program that is selected for recording; highlighting a program after that program has been recorded; and highlighting a mis-recorded cell with a different color/pattern than that of a recorded program or a program selected for recording, there is no disclosure of an event happening upon “a time scheduling conflict.”

The Advisory Action appears to assume that the “mis-recording” of Young is the same as the claimed “time scheduling conflict.” Even if, *arguendo*, the indication of a “mis-recorded cell” results from a time scheduling conflict (an event that Young does not disclose),

such an indication would be apparent only after the recording has taken place. Accordingly, for at least these reasons, *Young* does not disclose, teach, or suggest “assigning a second color responsive to determining that the television presentation has a time scheduling conflict with the another television presentation that is scheduled to be recorded” as recited in claim 41.

Applicants also traverse any finding that “it is well known in the art that if a conflict is occurring for more than one recording of a program the EPG will display the conflict to the user” as alleged on page 2 of the Advisory Action. Specifically, the only documentary evidence alleged to support this conclusory finding is that of *Young* which, as discussed, does not disclose this feature at all.

Neither does *Lemmons* address this deficiency. Applicants respectfully assert that *Lemmons* does not discuss time scheduling conflicts for scheduled programs at all, and consequently there is no disclosure of “assigning a second color responsive to determining that the television presentation has a time scheduling conflict with the another television presentation that is scheduled to be recorded,” as recited in claim 41.

Accordingly, Applicants respectfully submit that the combination of *Young* and *Lemmons* does not disclose, teach or suggest “assigning a second color responsive to determining that the television presentation has a time scheduling conflict with the another television presentation that is scheduled to be recorded.” Furthermore, because no color has been assigned responsive to determining that the television presentation has a time scheduling conflict with the another television presentation that is scheduled to be recorded, the proposed combination of *Young* and *Lemmons* does not disclose, teach or suggest “presenting the television presentation listing as part of an interactive program guide (IPG) having the second color as a background color for the television presentation listing.” Thus, a *prima facie* case of obviousness is not established based on *Young* and *Lemmons*. Consequently, for at least these reasons, among others, Applicants respectfully request that claim 41 be allowed and the rejection be withdrawn.

Because independent claim 41 is allowable over the proposed combination, dependent claims 3-5, 7-12, 14-15, 17-19, 21 and 42-45 are allowable as a matter of law for at least the reason that dependent claims 3-5, 7-12, 14-15, 17-19, 21 and 42-45 contain all elements of independent claim 41. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to dependent claims 3-5, 7-12, 14-15, 17-19, 21 and 42-45 should be withdrawn for at least this reason, among others.

Independent Claims 23 and 50

Claims 23 and 50, although different in scope from claim 41, include limitations similar to claim 41. Therefore, the discussion of claim 41 provided above also, in general, applies to these claims. Accordingly, the comments provided in relation to claim 41 will not be repeated herein for claims 23 and 50. However, Applicants submit that if more detail is needed, the arguments set forth in the Response to the Final Office Action mailed June 6, 2006 may be referenced for this purpose.

Dependent Claims 24-27, 29-32, 35-38, 40, and 51-56

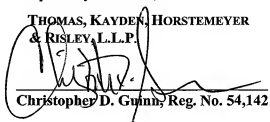
Because independent claim 23 is allowable over the proposed combination, dependent claims 24-27, 29-32, 35-38 and 40 are allowable as a matter of law for at least the reason that dependent claims 24-27, 29-32, 35-38 and 40 contain all elements of independent claim 23. Further, because independent claim 50 is allowable over the proposed combination, dependent claims 51-56 are allowable as a matter of law for at least the reason that dependent claims 51-56 contain all elements of independent claim 50. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to dependent claims 50-56 should be withdrawn for at least this reason, among others.

CONCLUSION

As is apparent from the foregoing, the cited art is woefully deficient in rendering Applicants' claims unpatentable. Therefore, application of *Young* in view of *Lemmons*, against Applicants' claims under 35 U.S.C. §103 rises to the level of clear legal and/or factual error. Applicants therefore request that the rejections of the Final Office Action and Advisory Action be withdrawn and a new, non-final Office Action, or Notice of Allowance, be issued.

Respectfully submitted,

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

A-7420 (191920-1190)

Application Number

10/073,689

Filed

February 11, 2002

First Named Inventor

Plourde, et al.

Art Unit

2616

Examiner

Jamie J. Vent

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the



applicant/inventor.



assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/98)

attorney or agent of record.

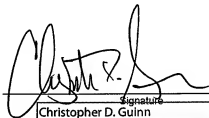
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54,142

Registration number if acting under 37 CFR 1.34



Signature

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Telephone number

August 28, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

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